

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA.

CASE NO. CR16-0113JLR

Plaintiff,

V.

SANTOS PETER MURILLO

**ORDER ON REQUEST FOR  
CLARIFICATION**

## Defendant.

Before the court is Defendant Santos Peter Murillo’s request for clarification of court’s October 1, 2020 order regarding Mr. Murillo’s *pro se* filings. (See Request for clarification (Dkt. # 156); *see also* 10/1/20 Order (Dkt. # 147).) As the court noted in or order, the court received a motion for relief from judgment and a motion for al notice from Mr. Murillo on September 24 and 25, 2020, respectively. (See 0 Order at 1.) The court struck those filings because Mr. Murillo filed them *pro se* though he has court-appointed counsel in this criminal matter. (See *id.* at 1-2.) Mr. o now seeks clarification of the basis of that order. (See generally Request for

1 Clarification.) Specifically, Mr. Murillo informs the court that he understood that his  
2 court-appointed counsel was appointed only for purposes of Mr. Murillo's pending  
3 motion for compassionate release, and not his 28 U.S.C. § 2255 habeas petition, which is  
4 also pending before the court. (*See id.* at 1-2); *see also Murillo v. United States of*  
5 *America*, Case No. C20-0484JLR. Because Mr. Murillo is not represented by counsel in  
6 his parallel habeas proceedings, he believed that he was entitled to file the motion for  
7 relief from judgment and motion for judicial notice *pro se*. (*See* Request for Clarification  
8 at 1-2.)

9 Here, Mr. Murillo's critical error is his failure to properly label his filings to  
10 distinguish between this criminal case and the parallel habeas proceedings. Mr. Murillo  
11 is correct that he is proceeding *pro se* in his civil habeas case and, as such, he is entitled  
12 to file documents *pro se* in that matter. However, the court struck Mr. Murillo's filings  
13 because both filings were captioned with the case information and case number for this  
14 criminal proceeding, not his parallel civil habeas proceeding. Thus, because Mr. Murillo  
15 labeled the motion for relief from judgment and the motion for judicial notice with the  
16 information from this criminal case, the court believed that Mr. Murillo intended to file  
17 those documents in this criminal case. As the court explained, however, the court has  
18 appointed Mr. Murillo counsel for his criminal case, which means that Mr. Murillo may  
19 not file *pro se* motions in this criminal proceeding unless he complies with the  
20 requirements of Local Civil Rule 83.2(b)(5). (*See* 10/1/20 Order at 1-2 (citing Local  
21 Rules W.D. Wash. LCrR 1(a) (adopting Local Rules W.D. Wash. LCR 83.2(b) for  
22 criminal proceedings); Local Rules W.D. Wash. LCR 83.2(b)(5) (requiring a represented

1 party that seeks to appear or act *pro se* to “request[] by motion to proceed on his or her  
2 own behalf, certif[y] in the motion that he or she has provided copies of the motion to his  
3 or her current counsel and to the opposing party, and [receive from the court] an order of  
4 substitution by the court terminating the party’s attorney”)). Thus, the court struck Mr.  
5 Murillo’s filings and declined to add them to the docket because they were improperly  
6 filed *pro se*.

7 For future filings, the court advises Mr. Murillo that any filings that he wishes to  
8 file in his civil habeas proceeding must be labeled with the case caption from Mr.  
9 Murillo’s civil case and the case number from that case (C20-0484JLR). In contrast, for  
10 future filings in this case, Mr. Murillo must either file documents through his  
11 court-appointed counsel or comply with Local Civil Rule 83.2(b)(5). For the avoidance  
12 of doubt, the court also reiterates that it has appointed counsel for Mr. Murillo only in this  
13 criminal matter and not in his parallel civil habeas case. *See Murillo v. United States of*  
14 *America*, Case No. C20-0484JLR, Dkt. # 12 at 3 (May 8, 2020) (declining to appoint  
15 counsel for Mr. Murillo in his civil habeas petition).

16 Finally, to the extent that Mr. Murillo intended to file the motion for relief from  
17 judgment and the motion for judicial notice in his civil habeas matter, the court notes that  
18 the court has already dismissed Mr. Murillo’s 28 U.S.C. § 2255 petition and denied a  
19 certificate of appealability. *See Murillo v. United States of America*, Case No.  
20 C20-0484JLR, Dkt. # 39 at 8-28 (Sept. 25, 2020). If Mr. Murillo had filed his motion for  
21 judicial notice in his civil case, the court would have disregarded it as untimely and  
22 improper because it asked the court to take judicial notice of caselaw, which is not a

1 proper use of judicial notice. The court considered all relevant caselaw in denying Mr.  
2 Murillo's motion to dismiss. Additionally, the motion for relief from judgment sought a  
3 new criminal trial based on newly discovered evidence, but Mr. Murillo's request was  
4 improperly based on Federal Rule of Civil Procedure 60(b). *See* Fed. R. Civ. P. 60(b).  
5 Moreover, the court already construed portions of Mr. Murillo's Section 2255 petition as  
6 a motion for a new trial under Federal Rule of Criminal Procedure 33 and concluded that  
7 Mr. Murillo was not entitled to a new trial. *See Murillo v. United States of America*, Case  
8 No. C20-0484JLR, Dkt. # 39 at 19-21 (Sept. 25, 2020). In sum, even if both of the  
9 now-stricken filings had been properly captioned with the case information and case  
10 number from Mr. Murillo's civil case, those filings would have been improper and would  
11 not have impacted the court's decision to dismiss Mr. Murillo's habeas petition.

12 Dated this 13th day of November, 2020.

13  
14   
15

16 JAMES L. ROBART  
17 United States District Judge  
18  
19  
20  
21  
22